

ORDINANCE NO. \_\_\_\_\_, SERIES 2007

AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 115 “REGULATIONS GOVERNING SPECIFIC BUSINESSES” OF THE LOUISVILLE METRO CODE OF ORDINANCES (LMCO) SECTIONS 115.170-115.181 RELATING TO “MASSAGE FACILITIES.”

Sponsored by: Council Members Blackwell, Downard and Kramer

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

**§ 115.170 DEFINITIONS.**

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEPARTMENT OF PUBLIC HEALTH AND WELLNESS.** The Louisville Metro Department of Public Health and Wellness.

**DIRECTOR.** The Director of the Louisville Metro Department of Codes and Regulations or a designee.

**MASSAGE.** The process whereby any person or persons apply on the body of any other person or persons pressure, friction, moisture, heat, or cold, or exert rubbing, stroking, kneading, pounding, touching or tapping by any physical or mechanical means for compensation.

**MASSAGE FACILITY.** Any establishment or operation wherein a massage is administered or permitted to be administered for compensation.

***MASSAGE FACILITY EMPLOYEE.*** Any person that is not a state licensed massage therapist that is suffered or permitted to work in a massage facility whether as an employee or an independent contractor.

***SEPARATE MASSAGE FACILITY.*** A room or group of rooms located at the same premises and treated in the operation of the business as a single unit wherein massage treatments are administered.

**§ 115.171 LICENSE REQUIRED; POSTING OF LICENSE.**

(A) No person, firm, or corporation shall engage in, conduct, or permit to be engaged in or conducted a massage facility in or on any premises within Jefferson County unless an annual license for the operation of a massage facility has been applied for and issued by the Director for the premises and the license remains in effect in conformity with the provisions of this subchapter.

(B) Any license issued under this subchapter shall be valid from the date of issuance until the next occurring March first, whether or not the next occurring March first is within the same calendar year as the grant of the license, unless the license has been suspended or revoked.

(C) Each operator of a massage facility licensed under this subchapter shall post, in a conspicuous place within the facility, the operator's license and the license of each massage facility employee.

**§ 115.172 APPLICATION FOR LICENSE; INVESTIGATION; FEE.**

(A) Each application to the Director for a license to operate a massage facility shall set forth:

(1) The name and address of the applicant;

(2) The names and addresses of the principal officers, if the applicant is a corporation and the designation of an agent residing in Jefferson County who shall be its representative for the purposes of this subchapter;

(3) The location for which the permit is desired;

(4) The names and addresses of all massage facility employees known as of the date of application;

(5) The business, occupation, or employment of the applicant or its owners, officers, directors, and resident agent for the three years immediately preceding the date of application;

(6) All criminal convictions of the applicant or its owners, officers, directors, and resident agent other than misdemeanor traffic violations for the past ten years;

(7) A complete set of finger prints for all owners, officers, directors and resident agents.

(B) A certification from the Director that a massage facility is a use permitted by the zoning district regulations where the proposed massage facility shall be located.

(C) A nonrefundable fee of \$100 shall accompany the application.

(D) An application for a license must be made for each separate massage facility. When an application is received by the Director, the Director shall refer a copy of the application to the Director of the Department of Public Health and Wellness and to the appropriate Fire Department or Fire District who shall within 10 business days of their receipt of the license application cause the facilities to be inspected along with the Director to determine if the facilities meet the health, sanitation, structural, and safety requirements set out in § 115.173, and report such information to the Director within 5 business days of such inspection.

(E) A license to operate a massage facility shall be issued to the applicant by the Director within 10 business days after receipt of the inspection reports required by Section 115.172 (D), if the application is fully and accurately completed and if the required inspections reveal that the massage facility meets the health, sanitation, structural, and safety requirements of § 115.173. However, no license shall be issued if the Director determines the applicant or any of its owners, officers, directors, or resident agents has been convicted of a felony, an offense involving a violation of KRS Chapter 510 or 529 or an equivalent law of another jurisdiction within the five years next preceding the date of application, or any violation of this subchapter.

(F) In the event of denial, the Director shall notify the applicant in writing of the reasons for such denial. Said notice shall be mailed, certified mail, return receipt requested, within 10 business days after the Director receives the inspection reports required by Section 115.172 (D).

(G) In the event the inspection required by this section are not completed within the time frame set forth in subsection (D) hereof or if the Director fails to notify the applicant in writing of the reasons for denial of the application in the manner prescribed in subsection (F) hereof, then the application will be deemed to be granted and the massage facility authorized to operate until such time as all required inspections have been completed, the Director has received the required reports, and the applicant receives notice of the Director's decision on the application by certified mail, return receipt requested.

#### **§ 115.173 HEALTH AND SAFETY STANDARDS.**

Each separate massage facility shall have:

- (A) Adequate ventilation;
- (B) Adequate lighting;
- (C) Equipment and disinfectants approved by the Department of Public Health and Wellness for disinfecting and sterilizing instruments used in administering massage treatments;
- (D) Clean linen of sufficient quantity that it can be changed after each massage treatment and cabinets for storage of the clean linen;
- (E) Adequately clean bathing, dressing, locker, and toilet facilities for patrons and employees;

(F) If male and female patrons are to be served simultaneously at the establishment, a separate massage room or rooms, separate dressing facilities, and separate toilet facilities shall be provided for male and female patrons with structurally sound walls, ceilings, and floors in accordance with the standards of applicable building and fire codes of the Metro Government.

Penalty, see § 115.999

#### **§ 115.174 DUTIES OF OPERATOR.**

It shall be the duty of the operator of a massage facility licensed under this subchapter to maintain the health and safety standards set out herein; to notify the Director within 3 business days of any additions or terminations of massage facility employees; to notify the Director and the Department of Public Health and Wellness within 3 business days should the operator become aware of any venereal disease which occurs among its massage facility employees; to discharge any massage facility employee who has contracted such venereal disease; and to obtain, complete and file each year an occupational license fee return with the Metro Revenue Commission.

#### **§ 115.175 RIGHT OF ENTRY TO INSPECT.**

Any peace officer, Fire Department or Fire District official, and the appropriate investigating officials of the Metro Government and the Department of Public Health and Wellness shall have the right to enter any portion of a massage facility's premises where patrons and massage facility employees are permitted during business hours of the massage facility for the purpose of making reasonable inspections and determining

compliance with building, fire, electrical, plumbing, and health regulations, as well as all other provisions of law.

#### **§ 115.176 TRANSFER OF LICENSE.**

(A) No massage facility license shall be transferable except with the written approval of the Director . The application for such a transfer shall be in writing and shall contain the same information required by § 115.172 for the initial application for such a license.

(B) The application procedure shall be the same as outlined in § 115.172. A \$100 transfer fee shall be charged for each such license transfer.

(C) In the event of denial, notification and reasons for denial shall be given to the applicant in the manner provided by Section 115.172 (F). A denial of a transfer may be appealed in the same manner as the denial of an application for an original operator's license.

#### **§ 115.177 MASSAGE FACILITY EMPLOYEE LICENSE REQUIRED.**

(A) Any person who wants to work in sage facility must apply for a massage facility employee license. No massage facility employee shall work in a massage facility within Jefferson County unless such person has been issued an annual massage facility employee license by the Director and the license remains in effect in conformity with the provisions of this subchapter.

(B) All massage facility employee licenses issued under this subchapter shall be in effect from the date of issuance until the next occurring March first, whether or not the next occurring March first is within the same calendar year as the grant of the license, unless the massage facility employee license has been suspended or revoked.

**§ 115.178 APPLICATION FOR MASSAGE FACILITY EMPLOYEE LICENSE; INVESTIGATIONS; FEES.**

(A) Each application to the Director for a massage facility employee license shall be made in person by the applicant and shall set forth the following:

(1) The name, address, date of birth, telephone number, physical description, and two recent photographs of the applicant;

(2) The name and address of the massage facility where the applicant is to be employed, and the name of the owner of the facility, if known at the time of application;

(3) The names and addresses of the last 3 employers and any and all previous establishments where the applicant has been employed as a massage facility employee;

(4) All criminal convictions of the applicant, other than misdemeanor traffic violations for the past ten years;

(5) Whether any massage facility employee license previously has been denied the applicant or revoked and, if so, the reasons or the circumstances surrounding the denial or revocation; and



(6) A complete set of fingerprints of the applicant.

(B) All massage facility employee license applications shall be accompanied by a certificate from a medical doctor stating the applicant, within 30 days immediately prior to the filing of his application, has been examined and found to be free from any venereal disease.

(C) A nonrefundable fee of \$25 shall accompany the application.

(D) A massage facility employee license shall be issued by the Director to the applicant within 15 business days after receipt of the application if the applicant has furnished accurate and complete information on the application and has not been convicted of a felony, an offense involving a violation of KRS Chapters 510 or 529, or the equivalent violation under the laws of any other jurisdiction, within the five years next preceding the date of application, or any violation of this subchapter.

(E) In the event of denial, notice and reasons for denial shall be given to the applicant in the same manner provided by Section 115.172 (F).

#### **§ 115.179 REVOCATION OR SUSPENSION OF LICENSE.**

(A) \_\_\_\_The Director may suspend or revoke a massage facility license or a massage facility employee license on the showing at a hearing of the existence of any facts or conditions which would justify the denial of an original application or renewal thereof or that the licensee has violated or failed to perform any duty imposed by this subchapter. The Director shall notify the affected party of his decision to suspend or

revoke, and the reasons therefore, by certified letter, return receipt requested, sent to the most current address listed in the affected party's file.

(B) In the event the Director denies an application for a massage facility or massage facility employee license, suspends or revokes a license of either kind, or denies the transfer of a massage facility license, the Director shall advise the affected party of the right to appeal any such decision in the written notices of such actions required by this ordinance. When the Director denies an application for a massage facility or a massage facility employee license, the applicant shall not operate as a massage facility or act as a massage facility employee until either the Code Enforcement Board or a court of competent jurisdiction so orders. Otherwise, any decision by the Director to suspend or revoke any license issued hereunder shall remain in abeyance until all appeals are exhausted or the time for filing the initial appeal from the Director's decision under subsection (C) hereof has expired.

(C) Upon receipt of a decision from the Director to deny an application for a massage facility or massage facility employee license, to suspend or revoke a license, or to deny the transfer of a massage facility license, the party affected thereby shall have 10 business days from the date of receipt of said notice to appeal the Director's decision by notifying him in writing of the basis for said appeal. The notice of appeal may be hand delivered to the Director or sent certified mail, return receipt requested. Unless a timely notice of appeal is received, the decision of the Director shall be final.

(D) When the Director receives a notice of an appeal, he shall schedule a time and date for the appeal to be heard before the Code Enforcement Board and such

hearing shall be held within 30 calendar days of the date the Director receives the notice of appeal. The Director shall notify the appellant in writing of the hearing date and may send such notice by regular first class mail. The appellant may request an alternate hearing date but it in no event shall it be more than 30 days after the originally scheduled date.

(E) At the hearing on any license denial, suspension, revocation or denial of license transfer, the appellant shall have the right to counsel, present evidence and offer testimony by witnesses. The hearing shall be transcribed. After the Code Enforcement Board hears the evidence, it shall retire to executive session to consider the matter and shall receive no other communication while in executive session except it may consult with its legal counsel. The Board shall announce its decision in open session and render written findings within 20 days of its oral decision. The Board's decision will be final unless appealed.

(F) Any party adversely affected by the Code Enforcement Board's decision may appeal it to the Jefferson Circuit Court within 30 days of the date the Board issues its written findings. The party appealing the Board's decision will be responsible for the cost of preparing the transcript which, along with evidence presented and the written findings of the Board, shall constitute the record on appeal. The decision of the Board shall be effective during the pendency of the appeal unless stayed by a court of competent jurisdiction.

§ 115.180 EXCLUSIONS.

The provisions of this subchapter shall not apply to any person or facility licensed or regulated pursuant to KRS 309.350 et seq. or to any employee thereof. With the exception of those persons described in KRS 309.352 (4), all other persons and practitioners identified in KRS 309.352, and their employees, also shall be exempt from the provisions of this subchapter.

#### **§ 115.181 ADVERTISING PROHIBITED UNTIL LICENSE ACQUIRED.**

(A) No sign, advertisement, or display structure shall be erected, constructed, or maintained on the structure where a massage facility is located which shall advertise so as to convey the impression that massages are given or that an establishment is a massage facility until the massage facility and the massage facility employees are licensed. No person or business shall advertise in any media whatsoever, written or pictorial, in such a manner so as to convey the impression the person or business provides massages at a particular location or for hire unless such person or business is properly licensed and in compliance with all provisions hereunder.

(B) The Director is authorized to pursue all available civil remedies to enforce the provisions of subsection (A) of this section.

#### **A NEW SECTION 115.182**

In addition to the penalties provided in Section 115.999 (E), the Director is authorized to enforce the provisions of this ordinance through declaratory, injunctive and other civil actions filed in any court of competent jurisdiction

AMEND LMCO 115.999(E):

- (E) Any person, firm, or corporation operating a massage facility or acting as a massage facility employee without a valid license or temporary license issued pursuant to §§ 115.170 through 115.181 shall be fined not less than \$100 nor more than \$500., imprisoned for not more than 30 days, or both. Each day such violation continues shall constitute a separate offense.

**SECTION II:** This Ordinance shall take effect upon its passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Rick Blackwell  
President of the Council

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Jerry E. Abramson  
Mayor

\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_